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The Courthouse Ring

Atticus Finch and the limits of Southern liberalism.

by Malcolm Gladwell

1.

In 1954, when James (Big Jim) Folsom was running for a second term as governor of Alabama, he drove to Clayton, in Barbour County, to meet a powerful local probate judge. This was in the heart of the Deep South, at a time when Jim Crow was in full effect. In Barbour County, the races did not mix, and white men were expected to uphold the privileges of their gender and color. But when his car pulled up to the curb, where the judge was waiting, Folsom spotted two black men on the sidewalk. He jumped out, shook their hands heartily, and only then turned to the stunned judge. "All men are just alike," Folsom liked to say.

Big Jim Folsom was six feet eight inches tall, and had the looks of a movie star. He was a prodigious drinker, and a brilliant campaigner,

who travelled around the state with a hillbilly string band called the Strawberry Pickers. The press referred to him (not always affectionately) as Kissin' Jim, for his habit of grabbing the prettiest woman at hand. Folsom was far and away the dominant figure in postwar Alabama politics—and he was a prime example of that now rare species of progressive Southern populist.

Folsom would end his speeches by brandishing a corn-shuck mop and promising a spring cleaning of the state capitol. He was against the Big Mules, as the entrenched corporate interests were known. He worked to extend the vote to disenfranchised blacks. He wanted to equalize salaries between white and black schoolteachers. He routinely commuted the death sentences of blacks convicted in what he believed were less than fair trials. He made no attempt to segregate the

crowd at his inaugural address. "Ya'll come," he would say to one and all, making a proud and lonely stand for racial justice.

Big Jim Folsom left office in 1959. The next year, a young Southern woman published a novel set in mid-century Alabama about one man's proud and lonely stand for racial justice. The woman was Harper Lee and the novel was "To Kill a Mockingbird," and one way to make sense of Lee's classic—and of a controversy that is swirling around the book on the eve of its fiftieth anniversary—is to start with Big Jim Folsom.

2.

The Alabama of Folsom—and Lee—was marked by a profound localism. Political scientists call it the "friends and neighbors" effect. "Alabama voters rarely identified with candidates

on the basis of issues," George Sims writes in his biography of Folsom, "The Little Man's Best Friend." "Instead, they tended to give greatest support to the candidate whose home was nearest their own." Alabama was made up of "island communities," each dominated by a small clique of power brokers, known as a "courthouse ring." There were no Republicans to speak of in the Alabama of that era, only Democrats. Politics was not ideological. It was personal. What it meant to be a racial moderate, in that context, was to push for an informal accommodation between black and white.

"Big Jim did not seek a fundamental shift of political power or a revolution in social mores," Sims says. Folsom operated out of a sense of noblesse oblige: privileged whites, he believed, ought to "adopt a more humanitarian attitude" toward blacks. When the black Harlem congressman Adam Clayton Powell, Jr., came to Montgomery, on a voter-registration drive, Folsom invited him to the Governor's Mansion for a Scotch-and-soda. That was simply good manners. Whenever he was accused of being too friendly to black people, Folsom shrugged. His assumption was that

Negroes were citizens, just like anyone else. "I just never did get all excited about our colored brothers," he once said. "We have had them here for three hundred years and we will have them for another three hundred years."

Folsom was not a civil-rights activist. Activists were interested in using the full, impersonal force of the law to compel equality. In fact, the Supreme Court's landmark desegregation ruling in *Brown v. Board of Education* ended Folsom's career, because the racial backlash that it created drove moderates off the political stage. The historian Michael Klarman writes, "Virtually no southern politician could survive in this political environment without toeing the massive resistance line, and in most states politicians competed to occupy the most extreme position on the racial spectrum." Folsom lost his job to the segregationist John Patterson, who then gave way to the radical George Wallace. In Birmingham, which was quietly liberalizing through the early nineteen-fifties, Bull Connor (who notoriously set police dogs on civil-rights marchers in the nineteen-sixties) had been in political exile. It was the *Brown* decision that brought him back. Old-style Southern liberalism—gradual and paternalistic—crumbled in the

face of liberalism in the form of an urgent demand for formal equality. Activism proved incompatible with Folsomism.

On what side was Harper Lee's Atticus Finch? Finch defended Tom Robinson, the black man falsely accused of what in nineteen-thirties Alabama was the gravest of sins, the rape of a white woman. In the years since, he has become a role model for the legal profession. But he's much closer to Folsom's side of the race question than he is to the civil-rights activists who were arriving in the South as Lee wrote her novel.

Think about the scene that serves as the book's centerpiece. Finch is at the front of the courtroom with Robinson. The jury files in. In the balcony, the book's narrator—Finch's daughter, Jean Louise, or Scout, as she's known—shuts her eyes. "Guilty," the first of the jurors says. "Guilty," the second says, and down the line: "guilty, guilty, guilty." Finch gathers his papers into his briefcase. He says a quiet word to his client, gathers his coat off the back of his chair, and walks, head bowed, out of the courtroom.

"Someone was punching me, but I was reluctant to take my eyes from the people below us, and from the image of Atticus's lonely walk down the aisle," Scout relates, in one of American literature's most moving passages:

"Miss Jean Louise?"

I looked around. They were standing. All around us and in the balcony on the opposite wall, the Negroes were getting to their feet. Reverend Sykes's voice was as distant as Judge Taylor's:

"Miss Jean Louise, stand up. Your father's passin'."

If Finch were a civil-rights hero, he would be brimming with rage at the unjust verdict. But he isn't. He's not Thurgood Marshall looking for racial salvation through the law. He's Jim Folsom, looking for racial salvation through hearts and minds.

"If you can learn a simple trick, Scout, you'll get along a lot better with all kinds of folks," Finch tells his daughter. "You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it." He is never anything but gracious to his neighbor Mrs. Dubose, even though she considers him a "nigger-lover." He forgives the townsfolk of Maycomb

for the same reason. They are suffering from a "sickness," he tells Scout—the inability to see a black man as a real person. All men, he believes, are just alike.

3.

Here is where the criticism of Finch begins, because the hearts-and-minds approach is about accommodation, not reform. At one point, Scout asks him if it is O.K. to hate Hitler. Finch answers, firmly, that it is not O.K. to hate anyone. Really? Not even Hitler? When his children bring up the subject of the Ku Klux Klan's presence in Maycomb, he shrugs: "Way back about nineteen-twenty there was a Klan, but it was a political organization more than anything. Besides, they couldn't find anyone to scare. They paraded by Mr. Sam Levy's house one night, but Sam just stood on his porch and told 'em things had come to a pretty pass. . . . Sam made 'em so ashamed of themselves they went away." Someone in Finch's historical position would surely have been aware of the lynching of Leo Frank in Marietta, Georgia, in 1915. Frank was convicted, on dubious evidence, of murdering a thirteen-year-old girl, Mary Phagan. The prosecutor in the case compared Frank to Judas Iscariot, and the crowd outside the courthouse

shouted, "Hang the Jew!" Anti-Semitism of the most virulent kind was embedded in the social fabric of the Old South. But Finch does not want to deal with the existence of anti-Semitism. He wants to believe in the fantasy of Sam Levy, down the street, giving the Klan a good scolding.

In the middle of the novel, after Tom Robinson's arrest, Finch spends the night in front of the Maycomb jail, concerned that a mob might come down and try to take matters into its own hands. Sure enough, one does, led by a poor white farmer, Walter Cunningham. The mob eventually scatters, and the next morning Finch tries to explain the night's events to Scout. Here again is a test for Finch's high-minded equanimity. He likes Walter Cunningham. Cunningham is, to his mind, the right sort of poor white farmer: a man who refuses a W.P.A. handout and who scrupulously repays Finch for legal work with a load of stove wood, a sack of hickory nuts, and a crate of smilax and holly. Against this, Finch must weigh the fact that Cunningham also leads lynch mobs against black people. So what does he do? Once again, he puts personal ties first. Cunningham, Finch tells his daughter, is "basically a

good man," who "just has his blind spots along with the rest of us." Blind spots? As the legal scholar Monroe Freedman has written, "It just happens that Cunningham's blind spot (along with the rest of us?) is a homicidal hatred of black people."

Finch will stand up to racists. He'll use his moral authority to shame them into silence. He will leave the judge standing on the sidewalk while he shakes hands with Negroes. What he will not do is look at the problem of racism outside the immediate context of Mr. Cunningham, Mr. Levy, and the island community of Maycomb, Alabama.

Folsom was the same way. He knew the frailties of his fellow-Alabamians when it came to race. But he could not grasp that those frailties were more than personal—that racism had a structural dimension. After he was elected governor a second time, in 1955, Folsom organized the first inaugural ball for blacks in Alabama's history. That's a very nice gesture. Yet it doesn't undermine segregation to give Negroes their own party. It makes it more palatable. Folsom's focus on the personal was also the reason that he was blindsided by Brown. He

simply didn't have an answer to the Court's blunt and principled conclusion that separate was not equal. For a long time, Folsom simply ducked questions about integration. When he could no longer duck, he wriggled. And the wriggling wasn't attractive. Sims writes:

In the spring of 1955, he repeated portions of his campaign program that touched the issue of desegregation tangentially and claimed that he had already made his position "plain, simple, and clear." He frequently repeated his pledge that he would not force black children to go to school with white children. It was an ambiguous promise that sounded like the words of a segregationist without specifically opposing segregation. Speaking to the Alabama Education Association in 1955, the governor recommended a school construction bond issue and implied that the money would help prolong segregation by improving the physical facilities of Negro schools.

4.

One of Atticus Finch's strongest critics has been the legal scholar Steven Lubet, and Lubet's arguments are a good example of how badly the brand of Southern populism Finch represents has aged over the past fifty

years. Lubet's focus is the main event of "To Kill a Mockingbird"—Finch's defense of Tom Robinson. In "Reconstructing Atticus Finch," in the Michigan Law Review, Lubet points out that Finch does not have a strong case. The putative rape victim, Mayella Ewell, has bruises on her face, and the supporting testimony of her father, Robert E. Lee Ewell. Robinson concedes that he was inside the Ewell house, and that some kind of sexual activity took place. The only potentially exculpatory evidence Finch can come up with is that Mayella's bruises are on the right side of her face while Robinson's left arm, owing to a childhood injury, is useless. Finch presents this fact with great fanfare. But, as Lubet argues, it's not exactly clear why a strong right-handed man can't hit a much smaller woman on the right side of her face. Couldn't she have turned her head? Couldn't he have hit her with a backhanded motion? Given the situation, Finch designs his defense, Lubet says, "to exploit a virtual catalog of misconceptions and fallacies about rape, each one calculated to heighten mistrust of the female complainant."

Here is the crucial moment of Robinson's testimony.

Under Finch's patient prodding, he has described how he was walking by the Ewell property when Mayella asked him to come inside, to help her dismantle a piece of furniture. The house, usually crowded with Mayella's numerous sisters and brothers, was empty. "I say where the chillun?" Robinson testifies, "an' she says—she was laughin', sort of—she says they all gone to town to get ice creams. She says, 'Took me a slap year to save seb'm nickels, but I done it. They all gone to town.' " She then asked him to stand on a chair and get a box down from the chifforobe. She "hugged him" around the waist. Robinson goes on:

"She reached up an' kissed me 'side of th' face. She says she never kissed a grown man before an' she might as well kiss a nigger. She says what her papa do to her don't count. She says, 'Kiss me back nigger.' I say Miss Mayella lemme outa here an' tried to run but she got her back to the door an' I'da had to push her. I didn't wanta harm her, Mr. Finch, an' I say lemme pass, but just when I say it Mr. Ewell yonder hollered through th' window."

"What did he say?"

... Tom Robinson shut his eyes tight. "He says you goddam whore, I'll kill ya."

Mayella plotted for a year, saving her pennies so she could clear the house of her siblings. Then she lay in wait for Robinson, in the fervent hope that he would come by that morning. "She knew full well the enormity of her offense," Finch tells the jury, in his summation, "but because her desires were stronger than the code she was breaking, she persisted in breaking it." For a woman to be portrayed as a sexual aggressor in the Jim Crow South was a devastating charge. Lubet writes:

The "she wanted it" defense in this case was particularly harsh. Here is what it said about Mayella: She was so starved for sex that she spent an entire year scheming for a way to make it happen. She was desperate for a man, any man. She repeatedly grabbed at Tom and wouldn't let him go, barring the door when he respectfully tried to disentangle himself. And in case Mayella had any dignity left after all that, it had to be insinuated that she had sex with her father.

It is useful, once again, to consider Finch's conduct in the light of the historical South of his time. The scholar Lisa Lindquist Dorr has examined two hundred and eighty-eight cases of black-on-white rape that occurred in Virginia between 1900 and

1960. Seventeen of the accused were killed through "extra legal violence"—that is to say, lynched. Fifty were executed. Forty-eight were given the maximum sentence. Fifty-two were sentenced to prison terms of five years or less, on charges ranging from rape and murder to robbery, assault and battery, or "annoying a white woman." Thirty-five either were acquitted or had their charges dismissed. A not inconsiderable number had their sentences commuted by the governor.

Justice was administered unequally in the South: Dorr points out that of the dozens of rapists in Virginia who were sentenced to death between 1908 and 1963 (Virginia being one of the few states where both rape and attempted rape were capital crimes) none were white. Nonetheless, those statistics suggest that race was not always the overriding consideration in rape trials. "White men did not always automatically leap to the defense of white women," Dorr writes. "Some white men reluctantly sided with black men against white women whose class or sexual history they found suspect. Sometimes whites trusted the word of black men whose families they had known for generations over the sworn testimony of

white women whose backgrounds were unknown or (even worse) known and despised. White women retained their status as innocent victim only as long as they followed the dictates of middle-class morality."

One of Dorr's examples is John Mays, Jr., a black juvenile sentenced in 1923 to an eighteen-year prison term for the attempted rape of a white girl. His employer, A. A. Sizer, petitioned the Virginia governor for clemency, arguing that Mays, who was religious and educated, "comes of our best negro stock." His victim, meanwhile, "comes from our lowest breed of poor whites. . . . Her mother is utterly immoral and without principle; and this child has been accustomed from her very babyhood to behold scenes of the grossest immorality. None of our welfare work affects her, she is brazenly immoral."

The reference to the mother was important. "Though Sizer did not directly impugn the victim herself, direct evidence was unnecessary during the heyday of eugenic family studies," Dorr writes. "The victim, coming from the same inferior 'stock,' would likely share her mother's moral character." The

argument worked: Mays was released from prison in 1930.

This is essentially the defense that Atticus Finch fashions for his client. Robinson is the churchgoer, the "good Negro." Mayella, by contrast, comes from the town's lowest breed of poor whites. "Every town the size of Maycomb had families like the Ewells," Scout tells us. "No truant officers could keep their numerous offspring in school; no public health officer could free them from congenital defects, various worms, and the diseases indigenous to filthy surroundings." They live in a shack behind the town dump, with windows that "were merely open spaces in the walls, which in the summertime were covered with greasy strips of cheesecloth to keep out the varmints that feasted on Maycomb's refuse." Bob Ewell is described as a "little bantam cock of a man" with a face as red as his neck, so unaccustomed to polite society that cleaning up for the trial leaves him with a "scalded look; as if an overnight soaking had deprived him of protective layers of dirt." His daughter, the complainant, is a "thick-bodied girl accustomed to strenuous labor." The Ewells are trash. When the defense insinuates that Mayella is the victim of incest at the hands of her father, it is not to make

her a sympathetic figure. It is, in the eugenicist spirit of the times, to impugn her credibility—to do what A. A. Sizer did in the John Mays case: The victim, coming from the same inferior stock, would likely share her father's moral character. "I won't try to scare you for a while," Finch says, when he begins his cross-examination of Mayella. Then he adds, with polite menace, "Not yet."

We are back in the embrace of Folsomism. Finch wants his white, male jurors to do the right thing. But as a good Jim Crow liberal he dare not challenge the foundations of their privilege. Instead, Finch does what lawyers for black men did in those days. He encourages them to swap one of their prejudices for another.

5.

One of George Orwell's finest essays takes Charles Dickens to task for his lack of constructive suggestions." Dickens was a powerful critic of Victorian England, a proud and lonely voice in the campaign for social reform. But, as Orwell points out, there was little substance to Dickens's complaints. "He attacks the law, parliamentary

government, the educational system and so forth, without ever clearly suggesting what he would put in their places," Orwell writes. "There is no clear sign that he wants the existing order to be overthrown, or that he believes it would make very much difference if it were overthrown. For in reality his target is not so much society as 'human nature.' " Dickens sought "a change of spirit rather than a change in structure."

Orwell didn't think that Dickens should have written different novels; he loved Dickens. But he understood that Dickens bore the ideological marks of his time and place. His class did not see the English social order as tyrannical, worthy of being overthrown. Dickens thought that large contradictions could be tamed through small moments of justice. He believed in the power of changing hearts, and that's what you believe in, Orwell says, if you "do not wish to endanger the status quo."

But in cases where the status quo involves systemic injustice this is no more than a temporary strategy. Eventually, such injustice requires more than a change of heart. "What in the world am I ever going to do with the Niggers?" Jim Folsom

once muttered, when the backlash against Brown began to engulf his political career. The argument over race had risen to such a pitch that it could no longer be alleviated by gesture and symbolism—by separate but equal inaugural balls and hearty handshakes—and he was lost.

Finch's moral test comes at the end of "To Kill a Mockingbird." Bob Ewell has been humiliated by the Robinson trial. In revenge, he attacks Scout and her brother on Halloween night. Boo Radley, the reclusive neighbor of the Finches, comes to the children's defense, and in the scuffle Radley kills Ewell. Sheriff Tate brings the news to Finch, and persuades him to lie about what actually happened; the story will be that Ewell inadvertently stabbed himself in the scuffle. As the Sheriff explains:

Maybe you'll say it's my duty to tell the town all about it and not hush it up. Know what'd happen then? All the ladies in Maycomb includin' my wife'd be knocking on his door bringing angel food cakes. To my way of thinkin', Mr. Finch, taking the one man who's done you and this town a great service an' draggin' him with his shy ways into the limelight—to me, that's a sin. It's a sin and I'm not about to have it on my head. If it was any other man it'd be different.

But not this man, Mr. Finch.

The courthouse ring had spoken. Maycomb would go back to the way it had always been.

"Scout," Finch says to his daughter, after he and Sheriff Tate have cut their little side deal. "Mr. Ewell fell on his knife. Can you possibly understand?"

Understand what? That her father and the Sheriff have decided to obstruct justice in the name of saving their beloved neighbor the burden of angel-food cake? Atticus Finch is faced with jurors who have one set of standards for white people like the Ewells and another set for black folk like Tom Robinson. His response is to adopt one set of standards for respectable whites like Boo Radley and another for white trash like Bob Ewell. A book that we thought instructed us about the world tells us, instead, about the limitations of Jim Crow liberalism in Maycomb, Alabama.

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